REMARKS

Please reconsider the claims in the application in view of the remarks below.

Claim Rejection – 35 U.S.C. §102(b)

Claims 1-4, 7-30 were rejected under 35 U.S.C. 102(b) as allegedly being anticipated by U.S. Patent No. 6,145,088 ("Stevens"). Applicant respectfully traverses the rejection.

To anticipate a claim, the reference must teach every element of the claim, that is, the cited reference must disclose an identical invention. See, MPEP §2131. Contrary to the Office Action, Stevens does not disclose or suggest every element claimed in independent claims 1, 10, 15, 20, 25 and 30. Stevens as understood by applicant discloses remote recovery of inaccessible data on computer storage devices. Stevens' bootable remote data recovery operating system determines the specific hardware configuration of the user's local computer, interrogates the user, and establishes communications link with the remote data recovery computer and downloads the information entered by the user. The technician at the remote data recovery computer then takes control of the user's computer via the remote link and begins the remote data recovery process.

Stevens, however, does not disclose or suggest at least "an operating system of a second platform type adapted to be executed on said first computing system upon failure of said operating system of said first platform type" claimed in independent claim 1. The Office Action cites column 7, lines 43-48 of Stevens as allegedly disclosing that element. While that passage discloses, "The software components of such a system include a Data Recovery Operating System (DROS) 306 as the local RDR computer operating system 340," that passage does not disclose or suggest "an operating system of a second platform type."

Further, Stevens does not disclose or suggest at least "a means at said second computing system for utilizing said diagnostic information to diagnose the subject failed operating system of said first computing system; and a means executing at said second computing system for generating repair information for communication to the application running on said first computer system to repair the failed operating system " claimed in independent claim 1. The Office Action cites Stevens' column 17, lines 34-50 and Figure 14, column 14, lines 57-59, as allegedly disclosing those elements. Those passages disclose establishing a logical connection and beginning remote data recovery. Those passages, however, do not disclose "diagnostic information to diagnose the subject failed operating system" or "generating repair information ... to repair the failed operating system." Rather, Stevens appears to be concerned with remote data recovery, not an "operating system".

Independent claims 10, 15, 20, 25 and 30 recite similar elements. Therefore, for the same foregoing reason, applicant believes Stevens does not disclose or suggest every element claimed in those claims. For at least the foregoing reasons, it is believed that Stevens does not anticipate independent claims 1, 10, 15, 20, 25, 30 and their dependent claims by at least virtue of their dependencies.

Claim rejection – 35 U.S.C. §103(a)

The Office Action rejected claims 5-6 under 35 U.S.C. §103(a) as allegedly being unpatentable over Stevens taken in view of U.S. Patent No. 6,281,894 ("Rive"). Because Rive also lacks what Stevens fails to disclose or suggest as discussed above, it is submitted that claims 5-6 are not obvious over Stevens and Rive.

In view of the foregoing, this application is now believed to be in condition for allowance, and a Notice of Allowance is respectfully requested. If the Examiner believes a telephone conference might expedite prosecution of this case, applicant respectfully requests that the Examiner call applicant's attorney at (516) 742-4343.

Respectfully submitted,

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